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Message Text

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LIMDIS FOR LOSDEL

E.O. 11652: XGDS - 3

TAGS: OVIP (KISSINGER, HENRY A.) PLOS

SUBJECT: SCOPE PAPER FOR YOUR VISIT TO LOS CONFERENCE

1. OVERVIEW. WE AND OTHERS DECIDED TO DRAW THE BATTLE LINES EARLY IN ALL COMMITTEES. IN ALL BUT THE FIRST COMMITTEE, THIS HAS FOCUSED NEGOTIATIONS ON THE REAL PROBLEMS AS WE PERCEIVE THEM, AND DIRECTED ATTENTION AWAY FROM TEXTS WE DO NOT WANT SUBSTANTIALLY CHANGED. THE THREE COMMITTEES AND THE DISPUTE SETTLEMENT NEGOTIATION
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CONTINUE TO RUN LARGELY INDEPENDENTLY OF EACH OTHER.

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WE COULD EXPECT THIS TO CONTINUE AT LEAST UNTIL
AMERASINGHE RETURNS ABOUT AUGUST 23.

2. OUR OBJECTIVE IS TO COMPLETE THE SUBSTANCE OF
COMMITTEE II, III AND, HOPEFULLY, DISPUTE SETTLEMENT OF
NEGOTIATIONS ON SATISFACTORY TERMS AT THIS SESSION
PARTICULARLY BECAUSE THE COMMITTEE II AND III TEXTS WILL
INFLUENCE THE NATURE OF UNILATERAL COASTAL STATE ACTIONS
EVEN IF A TREATY IS DELAYED. WE DO NOT BELIEVE THIS CAN
BE DONE IN COMMITTEE I, BUT IF THINGS GO REASONABLY WELL,
WE CAN COME CLOSER TO SUBSTANTIVE AGREEMENT.

3. TO DO THIS, WE MUST FIRST GIVE THE CLEAR SIGNAL THAT
CHANGES IN TEXTS TO RESOLVE OUR MAJOR PROBLEMS MUST BP
MADE. THUS, WE HAVE TAKEN HARDLINE POSITIONS, AND WILL
CONTINUE TO DO SO DURING THE SECOND WEEK. WE VIEW YOUR
FIRST VISIT ON AUGUST 13 AS (A) CONFIRMING U.S.
DETERMINATION ON ISSUES OF MAJOR IMPORTANCE TO US, (B)
WARNING THE OTHERS OF THE CONSEQUENCES OF A CONFRONTATTON
OVER THE DEEP SEABEDS, (C) GIVING YOU A FIRST-HAND
IMPRESSION OF THE OPPOSING VIEWS, (D) ENCOURAGING MODERATE
STATES TO TAKE GREATER LEADERSHIP ROLES IN NEGOTIATIONS
ON DEVELOPING COMPROMISE PROPOSALS, AND (E) LAYING THE
FOUNDATION FOR SUBSTANTIVE INTERVENTION BY YOU WITH
SPECIFIC PROPOSALS DURING YOUR SUBSEQUENT VISIT.

4. COMMITTEE 1 GOT CAUGHT IN A PROCEDURAL WRANGLE OVPR
WORKING GROUPS AND THEIR CHAIRMEN THAT IS, IN FACT, A
SUBSTANTIVE FIGHT OVER THE REVISED SNT. THE RADICAL LDC'S
WOULD LIKE TO DI CARD THE WHOLE TEXT (AND, IN EFFECT, THE
FIRST COMMITTEE CHAIRMAN ENGO WHOPUT IT OUT), WHILE THE
INDUSTRIALIZED STATES WANT TO NEGOTIATE ONLY SELECTFD -
PARTS OF IT. BY THE TIME YOU ARRIVE, THE REAL SUBSTAN-
TIVE ISSUES OUTLINED FOR YOU IN EARLIER MEMORANDA SHOULD
BEGIN TO EMERGE. COMMITTEE 11 HAS AGREED ON PROCEDURES
SATISFACTORY TO THE U.S. FOR DEALING WITH KEY ISSUES.
SUBSTANTIVELY, ON THE CRITICAL ISSUES OF THE HIGH SEAS
STATUS OF THE ECONOMIC ZONE THE OPPOSING VIEWS HAVE BEEN
FORCEFULLY PUT BEFORE THE COMMITTEE AND THE STAGE IS SET
FOR MEANINGFUL NEGOTIATIONS. THE AREAS OF POTENTIAL
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COMPROMISE ARE KNOWN TO KEY DELEGATIONS. YOU SHOULD

STRESS THE VITAL INTEREST THAT WE HAVE ON THIS ISSUE AND
STATE THAT WE DO NOT INTEND, BY IT, TO DETRACT FROM THE
RESOURCES AND OTHER RIGHTS OF COASTAL STATES IN THE ZONE.
ON SCIENTIFIC RESEARCH, COMMITTEE 111 IS POLARIZED
BETWEEN OUR POSITION AND LDC DEMANDS FOR A CONSENT REGIME.
YOU SHOULD WORK TO CONVINCE OTHER DELEGATIONS THAT THIS

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ISSUE IS IN FACT OF IMPORTANCE TO US.

5. THE LDC'S ARE BEGINNING TO GET NERVOUS ABOUT WHAT THEY PERCEIVE AS A TOUGHER U.S. ATTITUDE. WE ARE DELIBERATELY AVOIDING GIVING THE IMPRESSION WE CAN BE EXPECTED TO SACRIFICE SUBSTANTIVE INTERESTS IN ORDER TO WRAP UP A TREATY NOW. THIS MUST BE CAREFULLY MODULATED, SINCE WE DO NOT WISH TO ENCOURAGE A GENERAL LDC REBELLION. THE RISK OF THIS IN COMMITTEE I IS CONSIDERABLE.

6. BY THE TIME OF YOUR SECOND VISIT, IT WILL BE ABUNDANTLY CLEAR TO MOST DELEGATIONS THAT SOMETHING MUST BE DONE TO SAVE THE CONFERENCE. WE WOULD ANTICIPATE YOUR HAVING IN-DEPTH MEETINGS ON SELECTED ISSUES, WHERE YOU WOULD PRESENT SPECIFIC IDEAS. IN ADDITION TO BILATERALS, SUBJECT-ORIENTED MULTILATERAL MEETINGS, PERHAPS AT THE MINISTERIAL LEVEL, SHOULD BE CONSIDERED. A FINAL DECISION ON THE STRATEGY FOR YOUR SECOND VISIT MUST, HOWEVER, BE DEPENDENT ON THE OUTCOME OF YOUR INITIAL VISIT AND THE STATE OF PLAY AT THE TIME. WE DO NOT BELIEVE PUBLIC PRESENTATION OF NEW PROPOSALS WOULD WORK BECAUSE OF THE GENERAL FEELING AMONG LDC'S THAT THE U.S. DICTATED THE OUTCOME OF THE LAST SESSION IN COMMITTEE I.

7. FINALLY, DURING BOTH VISITS, SOME BILATERALS WILL ALSO FOCUS ON SPECIFIC PROBLEMS OF HIGH POLITICAL CONTENT THAT COULD GET OUT OF HAND. THUS, FOR EXAMPLE, WE WOULD HOPE YOUR MEETING WITH THE EGYPTIANS COULD HELP PERSUADE THEM NOT TO STAGE A MAJOR FIGHT OVER THE STRAIT OF TIRAN.

8. COMMITTEE I

8(A)(1). CURRENT NEGOTIATING STATUS OF THE MAIN OUT-
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STANDING ISSUES.

THE LDCS HAVE MADE A MAJOR EFFORT DURING THE FIRST WEEK OF THE CONFERENCE TO ENSURE THAT THERE IS A COMMON UNDERSTANDING THAT NO ARTICLE IN THE SNT IS YET AGREED UPON. THIS IS THE EXTREMIST REACTION TO THE "SELL OUTS" IN THE G-77, I.E., THE LDC MEMBERS OF THE SECRET BRAZIL GROUP WHO NEGOTIATED THE RSNT WITH US.

THE LDC'S HAVE RELUCTANTLY ACCEPTED THE RSNT AS A BASIS OF NEGOTIATION AND HAVE GIVEN UP AN EARLIER EFFORT TO USE THE L975 GENEVA TEXT INSTEAD. HOWEVER, WE CANNOT BE SURE WHETHER, ONCE THE LDC EXTREMISTS ARE FINISHED LETTING OFF STEAM, THEY WILL SEEK TO REOPEN THE ENTIRE RSNT OR ONLY A FEW FUNDAMENTAL ISSUES.

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8(A)(3). IT'APPEARS AT THIS STAGE THAT THE REAL CONCERN OF THE GROUP OF 77 AND THE ISSUES THAT THEY WOULD WANT TO NEGOTIATE FULLY ARE LIMITED TO STRENGTHENING THE ENTERPRISE ((SO THAT THERE IS A GENUINE PARALLEL SYSTEM OF EXPLOITATION)) AND THE VOTING PROCEDURES IN THE ASSEMBLY AS WELL AS ITS POWERS AND FUNCTIONS VIS-A-VIS THE COUNCIL.

8(A)(4). THE PRINCIPAL ISSUES WE WANT TO NEGOTIATE AT THIS SESSION ARE VOTING IN THE COUNCIL AND IMPROVEMENT TO THE ACCESS SYSTEM.

8(A)(5). THE SOVIET UNION AND CERTAIN INDUSTRIALIZED COUNTRIES CONTINUE TO PRESS FOR INCLUSION OF A QUOTA, OR ANTIMONOPOLY, PROVISION IN THE TREATY -- ALTHOUGH THEY ARE NOT PUSHING THIS ISSUE AT THIS TIME.

8(A)(6). FINALLY, WE HAVE CLEAR INDICATIONS THAT THE CANADIAN DELEGATION HAS INSTRUCTIONS TO SEEK AMENDMENTS REGARDING THE PRODUCTION LIMITATION IN ARTICLE 9.

8(A)(7). THERE HAVE BEEN NO NEGOTIATIONS ON THE TEXT DURING THE FIRST WEEK OF THE SESSION AND CONSEQUENTLY NO CHANGE IN THE NEGOTIATING SITUATION ON ANY OF THESE ISSUES AS COMPARED WITH THE CLOSING DAYS OF THE MARCH SESSION. COMMITTEE I HAS CONCENTRATED EXCLUSIVELY ON PROCEDURAL

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ISSUES WHICH, HOWEVER, IN FACT HAVE GREAT SUBSTANTIVE IMPLICATIONS. THE DEBATE HAS BEEN ON THE SELECTION OF TWO CO-CHAIRMEN. THE U.S. WAS ISOLATED. JAGOTA OF INDIA HAS BEEN SELECTED AS THE LDC CO-CHAIRMAN. THE DEVELOPED NATION WILL PROBABLY BE REPRESENTED BY THE E.C. REPRESENTATIVE. (PROFESSOR RIPHAGEN, NETHERLANDS).

8 (A)(8) WHEN THE SUBSTANTIVE NEGOTIATIONS BEGIN, THE LDCS WILL PROBABLY SEEK A POLITICAL COMPROMISE ON THE ACCESS SYSTEM SO AS TO ENSURE THE VIABILITY OF THE ENTERPRISE. IF THEY ARE UNSUCCESSFUL, THEY -- OR AT LEAST THE RADICAL LEADERSHIP -- WILL THEN ATTEMPT TO DESTROY THE PARALLEL SYSTEM AND RETURN TO PROVISIONS OF THE 1975 GENEVA TEXT -- EXCLUSIVE OPERATION BY THE ENTERPRISE. THE LDCS WILL ALSO REOPEN THE ARTICLE ON THE ASSEMBLY TO MAKE IT ABSOLUTELY CLEAR THAT THE ASSEMBLY IS THE PARAMOUNT POLICY-MAKING BODY IN THE AUTHORITY AND THAT THE COUNCIL IS SUBORDINATE AND IS STRIPPED OF POLICY-

8(A)(9). THE U.S. WILL, AT THE APPROPRIATE TIME, PROPOSE A NEW ARTICLE ON THE COMPOSITION AND VOTING IN THE

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COUNCIL AND IMPROVEMENTS TO THE ACCESS SYSTEM.

8(B)(1). BASIC STRATEGY/TACTICS OF THE U.S. DELEGATION TO ACHIEVE SUCCESSFUL PROGRESS.

THE US STRATEGY MUST BE DEVELOPED AGAINST THE BACKGROUND OF A SIGNIFICANT CHANGE IN THE NEGOTIATING SITUATION AT THIS SESSION OF THE CONFERENCE. AT THE MARCH-MAY SESSION, THE COMMITTEE I NEGOTIATIONS WERE EFFECTIVELY DOMINATED BY THE SECRET BRAZIL GROUP (BRAZIL, PERU, MEXICO, CHILE, JAMAICA, SINGAPORE, SRI LANKA, KENYA, NORWAY, FRANCE, UNITED STATES), WHICH, ACTING COLLECTIVELY, EXERCISED A CONSTRUCTIVE AND MODERATING INFLUENCE ON THE PROGRESS OF THE NEGOTIATION AND THE PREPARATION OF DRAFT ARTICLES. THIS PROCEDURE, ALTHOUGH EXTREMELY SUCCESSFUL, PROVOKED A STRONG, NEGATIVE REACTION AMONG CERTAIN COUNTRIES AT THE END OF THE LAST SESSION. THIS HAS LED TO A MAJOR EFFORT BY THE MORE EXTREMIST COUNTRIES (ALGERIA, THE ARAB STATES, INDIA AND MEXICO) TO CHANGE THE PROCEDURES IN COMMITTEE I

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WITH THE OBJECT OF MOVING BACK TOWARD THE 1975 GENEVA SNT ON IMPORTANT ISSUES. THESE COUNTRIES HAVE BEEN SUCCESSFUL IN INTRODUCING EXTREMIST RHETORIC INTO THE DEBATE AND HAVE INDICATED THEY ARE PREPARED TO PRESS FOR POSITIONS WHICH WOULD BE UNACCEPTABLE TO THE U.S. IN SUM, THEY ARE SEEKING TO RADICALIZE THE NEGOTIATIONS.

8 (B)(2). FOR THE TIME BEING, THOSE COUNTRIES WHICH ACTED AS MODERATES AND CONTRIBUTED TO PUTTING TOGETHER THE ELEMENTS OF A BROADLY ACCEPTABLE COMPROMISE PACKAGE IN MARCH HAVE BEEN DISCREDITED TO SOME DEGREE WITH THE GROUP OF 77 AND HAVE THEREFORE BEEN NEUTRALIZED AS EFFECTIVE PLAYERS. UNTIL SUCH TIME AS THESE COUNTRIES CAN ONCE AGAIN DOMINATE THE NEGOTIATIONS, WE CANNOT HOPE TO HAVE THE GROUP OF 77 ACCEPT U.S. POSITIONS. THE RE-EMERGENCE OF THE MODERATES CANNOT BE IMPOSED BUT CAN BE ENCOURAGED.

8(B)(3). WE EXPECT THAT IN THE FIRST PART OF THE SESSION THERE WILL BE MAJOR DRIVE BY THE RADICALS IN THE NEGOTIATION TO UNDO THE WORK DONE IN MARCH ON CERTAIN KEY ISSUES. THIS WILL ENTAIL NUMEROUS PUBLIC AND PROBABLY VITRIOLIC DEBATES BY THE MORE EXTREMIST DELEGATIONS. WE BELIEVE THAT THERE IS NO EFFECTIVE WAY TO PREVENT THIS FROM HAPPENING. OUR OVERALL STRATEGY WILL BE TO COUNTER EXTREMIST STATEMENTS BY TAKING A VERY TOUGH POSITION OURSELVES ON ALL MAJOR ISSUES AND SHOWING NO FLEXIBILITY ON QUESTIONS OF CONCERN TO THE RADICALS IN THE GROUP OF 77. IT IS OUR EXPECTATION THAT THIS WILL RESULT

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IN A BLOW-UP WITHIN COMMITTEE I. HOWEVER, WE BELIEVE THAT THE SITUATION WILL CHANGE WHEN IT BECOMES EVIDENT TO THE VAST MAJORITY OF DELEGATIONS THAT THE US WILL NOT BACK DOWN ON THE ISSUES OF VITAL IMPORTANCE TO IT AND THAT THE RADICALS WILL NOT SUCCEED IN GETTING THE US TO AGREE TO UNACCEPTABLE COMPROMISES. AT THIS POINT, WE EXPECT THAT THE CONFERENCE WILL RECOGNIZE THAT THE TACTICS OF THE RADICALS ARE JEOPARDIZING THE NEGOTIATIONS AND THE POSSIBILITY OFA TREATY. THE FOUNDATION WILL THUS BE LAID FOR THE MODERATES IN THE NEGOTIATIONS TO REASSUME THEIR LEADERSHIP ROLE.

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8(B)(4). ONE IMMEDIATE RESULT OF THE US STRATEGY WILL BE THAT FOR POSSIBLY HALF THE SESSION THERE WILL BE NO PROGRESS MADE ON SUBSTANTIVE ISSUES. THERE IS A DANGER THAT THIS STRATEGY WILL NOT WORK, THAT EARLY CONFRONTATION WOULD LEAD TO INFLEXIBLE POSITIONS AND CONSEQUENT CONTINUED STALEMATE. THERE MAY ALSO BE PRESS ATTACKS CRITICIZING THE US FOR TAKING UNREALISTIC AND UNRESPONSIVE POSITIONS. THIS STRATEGY ALSO POSTPONES RESOLUTION OF THE PROBLEM. THERE IS THE POSSIBILITY OF ENCOURAGING CONGRESSIONAL PROPONENTS OF UNILATERAL ACTION ON DEEP SEABED MINING, ESPECIALLY IN VIEW OF ADMINISTRATION PLEDGES TO REASSESS OUR OWN POSITION IN OPPOSITION TO SUCH LEGISLATION IF THIS SESSION OF THE CONFERENCE FAILS TO RESOLVE THESE ISSUES. WE FEEL, HOWEVER, THAT THESE RISKS MUST BE TAKEN IF WE ARE TO BREAK THE IMPASSE.

8(C)(1). THE SECRETARY'S PARTICIPATION.

WE BELIEVE THAT THE PRINCIPAL OBJECTIVE OF THE SECRETARY'S PARTICIPATION ON AUGUST 13 AS REGARDS THE DEEP SEABEDS NEGOTIATIONS SHOULD BE TO REINFORCE THE HARDLINE POSITION OUTLINED ABOVE. WE BELIEVE THAT THE SECRETARY SHOULD MAKE CLEAR TO KEY INFLUENTIAL DELEGATIONS THAT THE LAW OF THE SEA NEGOTIATIONS TOUCH ON A NUMBER OF ISSUES OF VITAL NATIONAL INTEREST TO THE UNITED STATES AND THAT WE CANNOT AGREE TO A TREATY THAT DOES NOT MEET OUR BASIC CONCERNS. YOU CAN STRESS THAT THE US HAS BEEN A LEADER IN THE NEGOTIATIONS IN SEEKING COMPROMISES AND ATTEMPTING TO ACCOMMODATE THE INTERESTS OF THE LARGE MAJORITY OF NATIONS WITH OCEAN CONCERNS. THE US HAS MADE A NUMBER OF COMPROMISE PROPOSALS IN AN EFFORT TO REACH A BROADLY ACCEPTABLE AGREEMENT. SOME OF THESE HAVE ENTAILED IMPORTANT CONCESSIONS ON OUR PART. HOWEVER, THERE IS A POINT BEYOND WHICH THE US IS NOT PREPARED TO GO.

8(C)(2). YOU SHOULD ALSO MAKE CLEAR THAT IT

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WOULD BE A MISTAKE FOR THOSE NATIONS, WHICH HOPE TO SEE
U.S. MAKE CONCESSIONS, TO DELAY FINAL AGREEMENT ON AN LOS
TREATY UNTIL NEXT YEAR IN THE HOPE THAT A NEW ADMINISTRA-
TION IN WASHINGTON WOULD BE MORE FLEXIBLE AND FORTHCOMING.
THE U.S. POSITION ON THE LAW OF THE SEA HAS ENJOYED BROAD,
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BIPARTISAN SUPPORT FOR MANY YEARS. IT HAS NEVER BEEN A
DOMESTIC POLITICAL ISSUE AND THERE IS NO REASON TO BELIEVE
THAT IT WILL BECOME ONE.

8(C)(3). AT THE SAME TIME, YOU SHOULD REMOVE
ANY IMPRESSION THAT THE U.S. IS WILLING TO MAKE CONCESS-
IONS IN RETURN FOR A QUICK AGREEMENT. WE WOULD CLEARLY
PREFER TO RESOLVE ALL MAJOR ISSUES AT THIS SESSION OF THE
CONFERENCE. WE BELIEVE THAT WITH THE PASSAGE OF TIME
A NEGOTIATED SETTLEMENT WILL BECOME MORE DIFFICULT AS
MORE AND MORE NATIONS TAKE UNILATERAL ACTION. HOWEVER,
THE U.S. IS PREPARED TO CONTINUE IN THESE NEGOTIATIONS AS
LONG AS THERE IS ANY REAL PROSPECT OF A NEGOTIATED SETTLE-
MENT WHICH COULD HAVE THE SUPPORT OF A LARGE NUMBER OF
STATES. WE WOULD HOPE THAT THE LEADERSHIP OF THE CONFER-
ENCE WOULD TRY TO ARRIVE AT THE BASIC POLITICAL
COMPROMISES WHICH ARE ESSENTIAL TO A SUCCESSFUL TREATY
AT THIS SESSION. IF THAT IS NOT POSSIBLE, THE
NEGOTIATIONS WILL HAVE TO CONTINUE NEXT YEAR.

8(D). RELATIONSHIP BETWEEN AUGUST 13 VISIT AND VISIT
OF AUGUST 24-26.

IF THE STRATEGY OUTLINED ABOVE IS SUCCESSFUL AND THE HARD-
LINE POSITION TAKEN BY THE U.S. SUCCEEDS, AFTER AN EARLY
BLOWUP, IN STRENGTHENING THE MODERATES' POSITION, REAL
NEGOTIATIONS CAN BEGIN AND WE CAN WORK TOWARDS MUTUALLY
ACCEPTABLE COMPROMISES. AT THAT STAGE, YOU MAY WISH TO
EXERCISE WHAT FLEXIBILITY WE MAY HAVE IN REGARD TO
CERTAIN ISSUES, IF IT APPEARS AT THAT TIME THAT IT WOULD
LEAD TO A SATISFACTORY COMPROMISE.

9. COMMITTEE II

9(A). CURRENT NEGOTIATING STATUS OF THE MAIN OUTSTANDING
ISSUES

THE PROCEDURAL PHASE OF THIS SESSION HAS BEEN COMPLETED,
AND OUR OBJECTIVE IN SEEKING TO FOCUS THE COMMITTEE ON
MAJOR OUTSTANDING ISSUES HAS BEEN ACHIEVED. COMMITTEE
II, AT THE OUTSET, WILL DEAL WITH THE QUESTIONS OF: (1)
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THE LEGAL STATUS OF THE ECONOMIC ZONE AND THE RIGHTS AND DUTIES OF COASTAL AND OTHER STATES INCLUDING LANDLOCKED AND GEOGRAPHICALLY DISADVANTAGED STATES (2) ACCESS OF LANDLOCKED STATES TO THE SEA AND RIGHTS OF TRANSIT; AND (3) THE CONTINENTAL SHELF, INCLUDING THE QUESTION OF REVENUE SHARING. THESE ISSUES WILL BE DEALT WITH INDIVIDUALLY BELOW. EACH SET OF ISSUES HAS BEEN ASSIGNED TO A NEGOTIATING GROUP COMPOSED OF INTERESTED STATES AND SUBSTANTIVE DISCUSSIONS HAVE BEGUN. THE MECHANISM SELECTED HAS NOT YET PROVED PRODUCTIVE AND THE DEBATES HAVE BEEN OF A GENERALLY PHILOSOPHICAL NATURE. AS THE SITUATION SOLIDIFIES, OTHER MEANS OF DEALING WITH THESE ISSUES WILL HAVE TO EVOLVE. IT IS CLEAR THAT SEVERAL DELEGATIONS, INCLUDING CERTAIN LANDLOCKED AND GEO-GRAPHICALLY DISADVANTAGED STATES (L/L AND GDS), WISH TO LESSEN THE INFLUENCE OF CHAIRMAN AGUILAR (VENEZUELA) ON THE OUTCOME OF THE NEGOTIATIONS, SINCE THEY FEEL THAT HE EXHIBITED NATIONAL PREJUDICES IN HIS DRAFTING OF THE REVISED SINGLE NEGOTIATING TEXT (RSNT). AGUILAR, WHO IN OUR JUDGMENT IS THE BEST AVAILABLE, THOUGH INCLINED AGAINST US ON SOME ISSUES, NOW CHAIRS ALL NEGOTIATING GROUPS AND IS KEEPING A FIRM GRASP ON THE PROCEEDINGS OF THE COMMITTEE.

10. MAJOR OUTSTANDING ISSUES

11 HIGH SEAS STATUS OF THE ECONOMIC ZONE

11(A). IT HAS CONSISTENTLY BEEN THE POSITION OF THE U.S. THAT THE WATERS WITHIN THE ECONOMIC ZONE MUST RETAIN THEIR STATUS AS HIGH SEAS, AS DEFINED IN EXISTING INTERNATIONAL LAW, EXCEPT PERTAINING TO SPECIFIC RIGHTS ASSIGNED TO COASTAL STATES IN THIS TREATY. THIS WOULD GIVE TO THE COASTAL STATES EXCLUSIVE RIGHTS RESPECTING RESOURCES, INCLUDING FISHERIES. OUR POSITION IS STRONGLY OPPOSED BY A SUBSTANTIAL NUMBER OF STATES, PRIMARILY MEMBERS OF THE COASTAL STATES GROUP. PARTICULARLY EFFECTIVE IN THIS OPPOSITION ARE MEXICO, PERU, BRAZIL, AND INDIA. THE OPPOSITION IS OF THE VIEW THAT, EXCEPT FOR NAVIGATION, COMMUNICATION AND OVERFLIGHT, ALL RIGHTS IN THE ZONE FALL TO THE COASTAL STATE. THE RSNT STATES THAT THE ECONOMIC

ZONE IS NOT HIGH SEAS.

11(B). THE U.S. TACTICS AT THIS POINT INVOLVE ASSUMING A

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FAIRLY TOUGH STANCE TO INDICATE THE IMPORTANCE OF THE ISSUE AND TO FORCE THE OPPOSITION TO RESPOND, THUS CREATING THE BASIS FOR EVENTUAL SUBSTANTIVE NEGOTIATIONS BY A SMALL GROUP OF NATIONS.

11(C). THE TIME IS NOT YET RIPE FOR THESE TALKS. YOU CAN, HOWEVER, THROUGH EMPHASIS ON THE

IMPORTANCE OF THE ISSUES, ENCOURAGE AN ATMOSPHERE CONDUCIVE TOMOVEMENT BYTHE OTHER SIDE. ALTHOUGH WE HAVE NOT SPECIFICALLYINDICATEDTHIS AS SUCH,THE OBJECTIVE IS TO WORK TOWARD A FORMULA THAT PROTECTS OUR NATIONAL INTERESTS (PRIMARILY MILITARY) AND TAKES AWAY FROM THE OPPOSITION THE ARGUMENT THAT THE AREA IS SUI GENERIS. IF THIS CAN BE ACCOMPLISHED, THE WORDS "HIGH SEAS" LOSE MUCH OF THEIR RELEVANCE. ONE PART OF SUCH A FORMULATION COULD BE A PROPOSAL, MADE DURING THE LAST SESSION OF THE CONFERENCE BY AUSTRALIA, WHICH WOULD DEFINE THE ECONOMIC ZONE AS HIGH SEAS "PROVIDED THAT THE EXCLUSIVE ECONOMIC ZONE IS NOT HIGH SEAS WITH RESPECT TO THE EXERCISE OF THE COASTAL STATES' RIGHTS PROVIDED FOR IN THIS CONVENTION.'

11(D). BY AUGUST 24, IT IS LIKELY THAT THE ISSUE WILL BE NARROWED. OTHER PARTICIPANTS WILL BE IMPRESSED WITH THE NEED TO RESOLVE THIS ISSUE TO OUR SATISFACTION (AND THE SATISFACTION OF OTHER MARITIME POWERS). WE ARE HOPEFUL THAT THE MAJOR PARTICIPANTS COULD BE REDUCED TO A FEW WHICH WERE REPRESENTATIVE ENOUGH TO MAKE THE NEGOTIATION OF THE FINAL SOLUTION POSSIBLE BY THAT TIME.

12. LANDLOCKED AND GEOGRAPHICALLY DISADVANTAGED STATES (LL/GDS)

12(A).THESE COUNTRIES REPRESENT A POTENTIAL BLOCKING THIRD IF THEY REMAIN SOLIDIFIED. THEY HAVE VIGOROUSLY PRESSED FOR THEIR INTERESTS. THE THREE BASIC CATEGORIES OF ISSUES IN WHICH THEY HAVE AN INTEREST ARE: (A) THE RIGHT OF ACCESS TO THE SEA BY LANDLOCKED COUNTRIES; (B) SOME FORM

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OF PREFERENTIAL ACCESS FOR L/L AND GDS TO THE LIVING RESOURCES IN THE ECONOMIC ZONES OF NEIGHBORING STATES OR IN THE REGION; AND (C) REVENUE SHARING FROM THE MINERAL RESOURCES EXTRACTED FROM THE CONTINENTAL MARGIN BEYOND 200 MILES (SOME WOULD SEEK A SHARE OF REVENUES INSIDE AS WELL). THESE ISSUES DO NOT DIRECTLY AFFECT U.S. INTERESTS AS THEY ARE REFLECTED IN THE RSNT. EVEN IF THE OBLIGATION TO ALLOW L/L/GDS STATES ACCESS TO FISHERIES WERE STRENGTHENED, SO LONG AS SUCH RIGHTS ARE LIMITED TO GEOGRAPHIC REGIONS, ONLY CERTAIN CARIBBEAN STATES WOULD

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QUALIFY TO FISH IN OUR ZONE (WHETHER CUBA WOULD QUALIFY IS NOT CLEAR). HOWEVER, THEIR RESOLUTION OF THIS ISSUE IS IMPORTANT TO THE SUCCESSFUL COMPLETION OF THE TREATY.

12(B). THE U.S. TACTIC HAS BEEN TO REMAIN NEUTRAL, EXPLORING SOLUTIONS SUGGESTED BY BOTH SIDES AND ENCOURAGING THEM TO SOLVE THE PROBLEMS THROUGH NEGOTIATION.

&
12(C). ON YOUR AUGUST 13 VISIT, YOU SHOULD TAKE NOTE AND EXPRESS SYMPATHY FOR THE IMPORTANCE OF RESOLVING THE PROBLEM. A PREMATURE TILT TOWARD THE LL/GDS COULD RESULT IN NEGOTIATING PROBLEMS WITH THE COASTAL STATES. THE OPPOSITE TILT MIGHT RESULT IN LOSS OF LL/GDS SUPPORT FOR OUR POSITION ON THE STATUS OF THE ECONOMIC ZONE, WHICH THEY NOW GENERALLY SUPPORT. A POTENTIAL DANGER IS THAT THE COASTAL STATES MAY OFFER THE LL/GDS GROUP CERTAIN RIGHTS IN THE ECONOMIC ZONE IN EXCHANGE FOR SUPPORT OF THE COASTAL STATE POSITION ON THE STATUS OF THE ZONE. ANY INDICATION OF THAT SHOULD BE MET BY A CORRESPONDING INDICATION OF THE IMPORTANCE OF RESOLVING THE STATUS OF THE ZONE FOR ACHIEVING A TREATY.

13. THE CONTINENTAL MARGIN

13(A). THE BASIC ISSUES UNDER DISCUSSION CONCERNING THE CONTINENTAL MARGIN INCLUDE THE DEFINITION OF THE OUTER LIMIT OF THE MARGIN AND THE QUESTION OF REVENUE SHARING FROM THE MARGIN BEYOND TWO HUNDRED MILES. THE BROAD MARGIN STATES WISH TO EXTEND THEIR MINERAL RIGHTS AS FAR SEAWARD AS POSSIBLE. THE LL/GDS, ALONG WITH A FEW
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OTHERS (INCLUDING THE USSR AND JAPAN) WISH TO LIMIT THE JURISDICTION OF COASTAL STATES IN THIS REGARD. THE U.S. HAS TAKEN A MORE OR LESS NEUTRAL POSITION SINCE WE HAVE LITTLE TO GAIN BY A BROAD MARGIN DEFINITION. WE HAVE STRESSED THE IMPORTANCE OF A PRECISE DEFINITION OF THE MARGIN (TO CORRECT THE INADEQUACIES OF THE 1958 GENEVA CONVENTION) WHICH PROVIDES FOR REASONABLE COASTAL STATE CONTROL OF MINERAL RESOURCES OF THE MARGIN. TO OFFSET THE RESULTING LOSS TO THE INTERNATIONAL COMMUNITY WE FAVOR INSTITUTING A REASONABLE SYSTEM OF REVENUE SHARING IN THAT PORTION OF THE MARGIN BEYOND 200 MILES.

13(A)(1). DURING THE LAST SESSION OF THE CONFERENCE, WE SUPPORTED AN IRISH/CANADIAN PROPOSAL THAT WOULD GIVE TO THE COASTAL STATE THE OPTION WHETHER TO END THE MARGIN AT A FIXED DISTANCE (60 MILES FROM THE FOOT OF THE SLOPE) OR AT A POINT MEASURED BY THE DEPTH OF THE SEDIMENTS. ALONG

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WITH THIS, WE PROPOSED A SYSTEM OF REVENUE SHARING BEYOND
200 MILES WHICH CALLS FOR NO SHARING DURING THE FIRST
FIVE YEARS AND THEN AN INCREASING PERCENTAGE CULMINATING
IN A VALUE OF 5 PERCENT OF THE VALUE OF THE RESOURCES AT
THE SITE AT THE END OF THE TENTH YEAR AND THEREAFTER.
BOTH PROPOSALS SEEMED TO ATTRACT ATTENTION.

13(B). U.S. TACTICS AT THIS POINT CALL FOR NEUTRALITY ON
THE ISSUE, BUT WITH QUIET SUPPORT FOR THE PACKAGE. WHILE
WE PREFER A "FIXED DISTANCE" SOLUTION, IT HAS PROVED NON-
NEGOTIABLE IN THE PAST. THE U.S. CONTINUES TO INSIST THAT
ALL COASTAL STATES, WHETHER DEVELOPED OR DEVELOPING, BE
SUBJECT TO THE SAME REVENUE SHARING FORMULA.

13 (C). YOU SHOULD STRESS THAT WE SUPPORT A REASONABLE
ACCOMMODATION BETWEEN THE INTERESTS OF THE BROAD AND
NARROW MARGIN STATES AND THAT A PRECISE AND FAIR
DEFINITION OF THE OUTER EDGE WHERE IT EXTENDS BEYOND 20
MILES COUPLED WITH NON-DISCRIMINATORY REVENUE SHARING FROM
MINERALS EXPLOITATION OF THE SHELF BEYOND 200 MILES MEETS
THAT OBJECTIVE. YOU SHOULD FURTHER INDICATE THAT ONLY
SUCH AN OUTCOME CAN ACCOMODATE THE DIVERGENT INTERESTS
INVOLVED AND GAIN WIDE-SPREAD SUPPORT AT THE CONFERENCE.
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13(D). IF THE MARGIN ISSUE IS UNRESOLVED AT THE END
OF AUGUST YOUR INTERVENTION MAY PROVE DESIRABLE, ESPECIALLY
AS IT RELATES TO AN EQUALOBLIGATIONOF ALL STATES TO
SHARE REVENUES ALTHOUGH THEREVENUES WOULD BE FOR THE
BENEFIT OF THE LDC'S.

14 (A) DEPENDENT TERRITORIES

WHILE THIS ISSUE IS NOT ONE UPON WHICH THERE WILL BE
EARLY NEGOTIATIONS, IT REMAINS ONE OF IMPORTANCE TO THE
U.S. THE GENEVA TEXT PROVIDED THAT RESOURCE RIGHTS OF
TERRITORIES UNDER FOREIGN DOMINATION ARE VESTED IN THE
INHABITANTS OF THOSE TERRITORIES. THE U.S. STRONGLY
OPPOSED THE TEXT AND INTRODUCED AN AMENDMENT THE EFFECT
OF WHICH WAS TO MAKE IT LARGELY HORTATORY RATHER THAN
LEGALLY BINDING. THE TEXT IN THE RSNT WAS ESSENTIALLY
UNCHANGED BUT THE CHAIRMAN MOVED THE TEXT FROM THE BODY
OF THE ARTICLES AND LABELED IT A 'TRANSITIONAL" PROVISION
THE PROPRIETY IN AN LOS TREATY OF THE PROVISION IS
QUESTIONED IN THE CHAIRMAN'S INTRODUCTORY NOTE. WHILE
OUR AMENDMENT IS NOT LIKELY TO BE ACCEPTED BY THE CONF-
FERENCE, WE SHOULD PRESS IT PUBLICLY WHILE WORKING
BEHIND THE SCENES TO HAVE THE TRANSITIONAL PROVISION

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DELETED. IT IS OF NOTE THAT THIS ISSUE IS RELATED TO
THE ISSUES OF WHO MAY SIGN THE TREATY AND WHO HAS ACCESS
TO DISPUTE SETTLEMENT PROCEDURES.

14 (B). IT IS IMPORTANT NOT TO RAISE THE ISSUE AT THIS
TIME SINCE IT IS NOT AT PRESENT BEFORE THE COMMITTEE FOR
DEBATE AND NEGOTIATION.

15. OTHER ISSUES

16. THE TERRITORIAL SEA. THE RSNT ESTABLISHES A MAXIMUM
12-MILE LIMIT. THIS IS ALL BUT AGREED. THE ARTICLES ON
INNOCENT PASSAGE IN THE TERRITORIAL SEA ARE SATISFACTORY.
ACCORDINGLY, WE DO NOT WISH THIS CHAPTER REOPENED. OUR
ONE PROBLEM IS THAT THE TEXT PROHIBITS COASTAL STATE
REGULATIONS AFFECTING CONSTRUCTION, DESIGN, MANNING, AND
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EQUIPMENT OF FOREIGN VESSELS IN THE TERRITORIAL SEA: THIS
IS DISCUSSED IN CONNECTION WITH POLLUTION IN COMMITTEE 111
BELOW.

17. STRAITS- THE PROVISIONS FOR "TRANSIT PASSAGE" OF
STRAITS CONNECTING TWO PARTS OF THE HIGH SEAS ARE SATIS-
FACTORY. WE WISH TO TREAT THESE TEXTS AS AGREED, AND
DO NOT WANT THEM REOPENED FOR NEGOTIATION. HARD-LINE STRAITS
STATES (YEMEN, OMAN, SPAIN, CHINA) WILL TRY TO REOPEN THE
ARTICLES. WE ARE WORKING WITH MALAYSIA FOR A SUPPLEMENTAL
AGREEMENT AMONG COASTAL AND USER STATES TO SUPPORT SPECIAL
REGULATIONS IN IMCO TO ESTABLISH A TRAFFIC SEPARATION
SYSTEM AND UNDER KEEL CLEARANCE REQUIREMENTS FOR THE
MALACCA STRAITS SO AS TO MINIMIZE THE POSSIBILITY
OF ACCIDENT; THE QUID PRO QUO IS MALAYSIAN SUPPORT FOR
THE STRAITS ARTICLES.WITH RESPECT TO THE PROBLEM REGARDING
THE STRAITS OF TIRAN, THE RSNT PROVISION IS IDENTICAL TO
THE PROVISION IN THE 1958 CONVENTION, WHICH EGYPT REFUSED
TO SIGN. THIS PROVISION IS UNACCEPTABLE TO ISRAEL, WHICH
DESIRES THE SAME RIGHT OF TRANSIT PASSAGE AS PROVIDED FOR
OTHER STRAITS, NOR IS THE PROVISION FOR NON-SUSPENDABLE
INNOCENT PASSAGE ANY MORE PALATABLE TO EGYPT (AND OTHER
ARAB BLOC STATES) NOW THAN IT WAS IN 1958. THE ISSUE WILL
HAVE TO BE RESOLVED AS PART OF THE MIDDLE-EAST SETTLEMENT.
IN THE MEANTIME, THE U.S. HAS TAKEN THE POSITION THAT THIS
ISSUE IS TOO EXPLOSIVE TO BE DEALT WITH IN ANY OTHER
MANNER IN THE LOS TREATY, AND A TILT EITHER WAY FROM THE
RSNT COULD DESTROY THE CONFERENCE. THE SECRETARY, IF THE
ISSUE ARISES, SHOULD EMPHASIZE THIS LATTER POINT.

18. FISHERIES. THE FISHERIES ARTICLES IN THE REVISED

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SINGLE NEGOTIATING TEXT HAVE BEEN EXTENSIVELY NEGOTIATED AND ALTHOUGH WE WILL CONTINUE OUR EFFORTS TO IMPROVE THEM, IN MOST RESPECTS,THEY ARE ACCEPTABLE TO THE UNITED STATES. THEY PROVIDE FOR COASTAL STATE PREFERENTIAL RIGHTS TO COASTAL STOCKS WITHIN THE 200-MILE ECONOMIC ZONE COUPLED WITH OBLIGATIONS UPON THE COASTAL STATE TO PERMIT FOREIGN FISHING WITHIN THE 200-MILE ZONE FOR THAT PART OF THE ALLOWABLE CATCH WHICH THE COASTAL STATE IS UNABLE TO HARVEST. THE RSNT ARTICLE ON SALMON ACCORDS THE STATE IN WHOSE RIVERS SALMON SPAWN MANAGEMENT AUTHORITY OVER

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THE STOCKS THROUGHOUT THEIR ENTIRE MIGRATORY RANGE, AND WOULD HAVE THE EFFECT OF PREVENTING ANY NEW HIGH SEAS FISHING FOR SALMON. IT REPRESENTS A DELICATE COMPROMISE AMONG THE STATES INVOLVED AND IS SUPPORTED BY THE U.S. THIS ARTICLE DIFFERS FROM THE PROVISION IN OUR OWN LAW, HOWEVER, AND WE COULD POSSIBLY ENCOUNTER PROBLEMS AS WE PROCEED WITH IMPLEMENTATION OF THAT STATUTE. THE PROVISIONS ON TUNA REPRESENT A BALANCE BETWEEN THOSE STATES (U.S. INCLUDED) WHICH SEEK INTERNATIONAL MANAGEMENT OF SUCH HIGHLY MIGRATORY SPECIES AND THOSE (LIKE ECUADOR AND PERU) WHO SEEK EXCLUSIVE COASTAL STATE MANAGEMENT WHEN TUNA ARE FOUND WITHIN THEIR 200-MILE ZONE. WE WOULD LIKE TO SEE THE TUNA ARTICLE STRENGTHENED IN FAVOR OF INTERNATIONAL MANAGEMENT, BUT CAN ACCEPT IT AS A MINIMUM. ATTITUDES ON THE ARTICLE ARE LIKELY TO BE INFLUENCED BY WEST COAST LATINS. THE OTHER MAJOR FISHERIES ISSUE INVOLVES ATTEMPTS BY LAND-LOCKED AND GEOGRAPHICALLY DISADVANTAGED STATES TO ACHIEVE SOME GUARANTEE OF ACCESS TO FISH RESOURCES OF THE ECONOMIC ZONES OF NEIGHBORING AND/OR REGIONAL COASTAL STATES. (SEE PART B ABOVE).

19. RIGHT OF ACCESS OF LANDLOCKED STATES TO AND FROM THE SEA AND RIGHT OF TRANSIT. THE RSNT INCLUDES A SECTION DEALING WITH THE TRADITIONAL ISSUE OF ACCESS TO THE SEA. THESE ARTICLES DEAL WITH THE RIGHTS OF LANDLOCKED STATES TO TRANSIT TO SEAPORTS FOR THE PURPOSE OF ENSURING COMMERCIAL TRADE AND COMMUNICATION. DISAGREEMENTS REMAIN BETWEEN CERTAIN LANDLOCKED STATES AND "TRANSIT" STATES ON THESE ISSUES, BUT ON THE WHOLE THEY SEEM TO REFLECT A REASONABLE COMPROMISE. U.S. SUBSTANTIVE INTERESTS ARE NOT AFFECTED.

20. HIGH SEAS. TRADITIONAL PROVISIONS RELATING TO THE HIGH SEAS (E.G., BASELINES, PIRACY, SLAVERY, ETC.) ARE NOT A PROBLEM. THE RSNT BASICALLY INCORPORATES THE PROVISIONS OF THE 1958 TREATY.

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21. ARCHIPELAGIC STATES. THE ARCHIPELAGIC STATES ARTICLES HAVE BEEN EXTENSIVELY NEGOTIATED BY THE U.S. AND CERTAIN ARCHIPELAGIC STATES, PRIMARILY FIJI, THE
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BAHAMAS AND INDONESIA. THE PRESENT ARTICLES ARE A DELICATE BALANCE BETWEEN: (A) THE DESIRES OF THE ARCHIPELAGIC STATES TO ENCLOSE THEIR ISLANDS WITHIN BASE-LINES FOR ECONOMIC AND SECURITY REASONS AND (B) THE STRATEGIC REQUIREMENTS OF THE MAJOR MARITIME POWERS TO HAVE GUARANTEED RIGHTS FOR THE CONTINUOUS AND EXPEDITIOUS TRANSIT THROUGH AND OVER ARCHIPELAGIC WATERS VIA SEALANES. OUTSTANDING MAJOR ISSUES RELATE TO: (A) THE BREADTH OF SEALANES, AND (B) AN EFFORT BY INDONESIA TODISTINGUISH BETWEEN STATE AND CIVIL AIRCRAFT. THE PRINCIPAL

ARCHIPELAGIC STATES INCLUDE INDONESIA, FIJI, THE BAHAMAS, PAPUA NEW GUINEA , AND THE PHILIPPINES. THE LAST-NAMED HAS BEEN THE LEAST COOPERATIVE. THE EXISTING ARTICLES, IN THE MAIN, ARE SATISFACTORY TO THE UNITED STATES.

22. COMMITTEE III

23. SCIENTIFIC RESEARCH

23(A). BACKGROUND

23(A)(1). THE RSNT GOES MUCH TOO FAR IN THE DIRECTION OF COASTAL STATE CONTROL OVER MARINE SCIENTIFIC RESEARCH IN THE ECONOMIC ZONE ALTHOUGH WE HAVE ALWAYS RECOGNIZED THAT THE STRONG DEMANDS OF ALMOST ALL DEVELOP-ING COASTAL STATES IN THIS REGARD WOULD HAVE TO BE ACCOMMODATED. THE SCIENTIFIC COMMUNITY, THE PRESIDENT OF THE NATIONAL ACADEMY OF SCIENCE,;R. PHILIP HANDLER, AND A NUMBER OF MEMBERS OF CON;RESS ARE STRONGLY OPPOSED TO THE TEXT. SOME SCIENTISTS HAVE STATED THAT THEY WOULD GO SO FAR TO OPPOSE RATIFICATION OF THE TREATY IF THE TEXT WERE NOT SUBSTANTIALLY AMENDED. THE U.S. ORIGINALLY PROPOSED THAT SCIENTIFIC RESEARCH IN THE ECONOMIC ZONE BE SUBJECT TO CERTAIN OBLIGATIONS ON THE RESEARCH STATE, INCLUDING NOTICE TO THE COASTAL STATE, A RIGHT FOR THE COASTAL STATE TO PARTICIPATE IN THE RESEARCH, SHARING OF DATA AND RESULTS, AND ASSISTANCE TO THE COASTAL STATE IN INTERPRETING THE DATA. WE HAVE CONSISTENTLY OPPOSED A RIGHT OF COASTAL STATE CONSENT (EXCEPT FOR DRILLING INTO THE SEABED), WHILE THE LARGE MAJORITY OF COASTAL STATES
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HAVE CONSISTENTLY SOUGHT A RIGHT OF CONSENT FOR ALL SCIENTIFIC RESEARCH IN THE ECONOMIC ZONE. IN YOUR APRIL 8 SPEECH, WE AGREED TO A COMPROMISE WHICH WAS INCLUDED IN THE GENEVA SNT, WHICH WOULD INCLUDE THE OBLIGATIONS, PROPOSED BY THE U.S.;BUT WOULD ALSO GIVE THE COASTAL STATE A RIGHT OF CONSENT FOR SCIENTIFIC RESEARCH DIRECTLY RELATED TO THE EXPLORATION AND EXPLOITATION OF THE NATURAL RESOURCES OF THE ECONOMIC ZONE, WITH COMPULSORY DISPUTE SETTLEMENT PROCEDURES TO MAKE FINAL DETERMINATIONS IN CASE OF DISAGREEMENT. NEGOTIATIONS ON SCIENTIFIC RESEARCH BOGGED DOWN IN THE SPRING IN PART BECAUSE CERTAIN COASTAL STATES INSISTED THAT THE COMPROMISE FORMULA DID NOT PROTECT THEIR SECURITY INTERESTS; WE, IN TURN REFUSED TO AGREE TO A PROPOSAL FOR A COASTAL STATE RIGHT TO DENY CONSENT ON SECURITY-RELATED GROUNDS, WHICH WOULD HAVE BEEN A MAJOR CHANGE IN THE CHARACTER OF THE ZONE.

23(A)(2). IN THE CLOSING DAYS OF THE SPRING SESSION, THE USSR INFORMALLY PROPOSED A NEW COMPROMISE WHICH THE BULGARIAN CHAIRMAN OF THE COMMITTEE INCORPORATED INTO THE RSNT DESPITE STRONG U.S. OBJECTIONS. UNDER THIS APPROACH, THE RESEARCHING STATE NOTIFIES THE COASTAL STATE IN ADVANCE OF ANY PROJECT AND IS REQUIRED TO FULFILL THE OBLIGATIONS PROPOSED ORIGINALLY BY THE U.S. HOWEVER, THE CONSENT OF THE COASTAL STATE IS REQUIRED FOR ALL SCIENTIFIC RESEARCH IN THE ECONOMIC ZONE AND ON THE CONTINENTAL SHELF, BUT SUCH CONSENT SHALL NOT BE WITHHELD UNLESS THE RESEARCH;(A) BEARS SUBSTANTIALLY ON THE EXPLORATION FOR AND EXPLOITATION OF NATURAL RESOURCES; (B) INVOLVES DRILLING OR THE USE OF EXPLOSIVES; (C) UNDULY INTERFERES WITH COASTAL STATE ECONOMIC ACTIVITIES IN THE ECONOMIC ZONE; OR (D) INVOLVES AN ARTIFICIAL ISLAND OR INSTALLATION UNDER COASTAL STATE JURISDICTION PURSUANT TO OTHER PROVISIONS IN THE TREATY. THERE IS ALSO A PROVISION THAT THE PROJECT CAN GO FORWARD IF THE COASTAL STATE DOES NOT RESPOND TO THE NOTIFICATION BY THE RESEARCHING STATE AT LEAST 2 MONTHS BEFORE THE PROJECT IS DUE TO BEGIN. FINALLY, THE TEXT PROVIDES THAT BINDING THIRD-PARTY DISPUTE SETTLEMENT PROCEDURES WILL APPLY TO ALL CASES OF DISAGREEMENT BETWEEN THE RESEARCHING AND COASTAL STATES. HOWEVER, THE SCIENTIFIC RESEARCH PROJECT

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MAY NOT GO FORWARD WHILE DISPUTE SETTLEMENT IS UNDERWAY. THERE ARE TWO VERY SERIOUS PROBLEMS WITH THE REGIME IN THE RSNT:

--THE BASIC CONCEPT OF REQUIRING COASTAL STATE CONSENT FOR ALL SCIENTIFIC RESEARCH; AND

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--THE BROAD, VAGUE WORDING OF THE PROVISIONS ALLOWING THE COASTAL STATE TO WITHHOLD CONSENT.

23(A)(3). ON THE FIRST POINT, THE OVERALL CONSENT REQUIREMENT ADDS ANOTHER ELEMENT OF COASTAL STATE CONTROL AND JURISDICTION TO THE ECONOMIC ZONE, MAKING IT MUCH MORE LIKE A TERRITORIAL SEA. TECHNICALLY, THIS REQUIREMENT ITSELF DOES NOT PROVIDE THE COASTAL STATE WITH THE LEGAL AUTHORITY TO STOP ANY PROJECT AS SUCH SINCE THE CONDITIONS FOR WITHHOLDING CONSENT ARE SPECIFIED (ALTHOUGH THE CONDITIONS IN THE RSNT ARE SO BROAD THAT THEY COULD ENCOMPASS ALL MARINE SCIENTIFIC RESEARCH. UNDER THE RSNT SYSTEM, IN THE LONG-TERM DEVELOPMENT OF THE LAW OF THE SEA AND PERHAPS IN PRACTICE IN SOME CASES, THE CONSENT REQUIREMENT MAY WELL EXPAND TO COVER ALL SCIENTIFIC RESEARCH. WE COULD ACCEPT AN OVERALL CONSENT REQUIREMENT, BUT ONLY IF IT WERE STIPULATED THAT CONSENT COULD BE WITHHELD ONLY FOR FAILURE TO FULFILL SPECIFIC OBLIGATIONS OUTLINED IN THE TREATY.

23(A)(4). ON THE SECOND POINT ABOVE, THE CONDITIONS FOR WITHHOLDING CONSENT ARE VAGUE, PARTICULARLY THE REFERENCE TO POSSIBLE INTERFERENCE WITH COASTAL STATE ECONOMIC ACTIVITIES, AND COULD BE UTILIZED BY A COASTAL STATE TO STOP ALMOST ANY SCIENTIFIC RESEARCH PROJECT. THEY MUST BE AMENDED. THE OTHER SERIOUS PROBLEMS ARE (A) WE OPPOSE APPLYING ANY CONSENT REGIME (EXCEPT FOR DRILLING) TO THE CONTINENTAL SHELF BEYOND 200 MILES, AND (B) THE AUTOMATIC CESSATION OF A PROJECT DURING DISPUTE SETTLEMENT. ONE OF OUR PROBLEMS IN DEALING WITH THE CONTINENTAL SHELF ISSUE IS THAT UNDER THE EXISTING 1958 CONTINENTAL SHELF CONVENTION, TO WHICH WE ARE A PARTY, COASTAL STATE CONSENT IS REQUIRED FOR SCIENTIFIC RESEARCH CONCERNING THE CONTINENTAL SHELF AND UNDERTAKEN THERE.ITS OBLIGATION IS NOT "NORMALLY" TO DENY CONSENT FOR RESEARCH BY A "QUALIFIED INSTITUTION." THERE ARE IMPORTANT POSITIVE ELEMENTS IN

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THE REVISED TEXT:
--ALL SCIENTIFIC RESEARCH DISPUTES ARE SUBJECT TO BINDING THIRD-PARTY DISPUTE SETTLEMENT PROCEDURES. WHILE THIS DOES NOT, IN A PRACTICAL SENSE, SAVE AN INDIVIDUALPROJECT, IT DOES PROVIDE SAFEGUARDS AGAINST ARBITRARY ACTION;
--ALL REQUESTS FOR SCIENTIFIC RESEARCH PROJECTS ARE SUBJECT TO A TACIT CONSENT SYSTEM. THUS, IF REQUESTS ARE NOT ANSWERED, WHICH IS OFTEN THE CASE TODAY, THE PROJECT MAY PROCEED. HOWEVER, THIS POSITIVE ASPECT MIGHT BE NEGATED IF RESEARCHERS ARE UNABLE OR UNWILLING TO PLAN AND OPERATE IN THIS UNCERTAIN ATMOSPHERE;
--THE COASTAL STATE DOES NOT HAVE THE RIGHT TO REFUSE

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CONSENT ON SECURITY GROUNDS, THUS AVOIDING A MAJOR CHANGE
IN THE NATURE OF THE ECONOMIC ZONE.

23(A)(5). CURRENT NEGOTIATING STATUS OF THE MAIN OUT-
STANDING ISSUES

COMMITTEE III HAS HAD SEVERAL DAYS OF DEBATE ON THE
BASIC REGIME FOR SCIENTIFIC RESEARCH . CHAIRMAN YANKOV
(BULGARIA) WILL HOLD PRIVATE SMALL-GROUP NEGOTIATIONS TO
ATTEMPT TO FIND A COMPROMISE. THE UNITED STATES HAS
INTERVENED TWICE WITH STRONG STATEMENTS INDICATING THE
UNACCEPTABILITY OF THE REVISED TEXT, THE NECESSITY OF
DELETING THE OVERALL CONSENT REQUIREMENT, AND THE FACT
THAT A FAILURE TO ACHIEVE MAJOR CHANGES WOULD RAISE
SERIOUS QUESTIONS OF THE UNITED STATES BECOMING PARTY TO
THE TREATY. WE HAVE BEEN SUPPORTED, WITH VARYING
DEGREES OF FIRMNESS, BY THE EUROPEAN ECONOMIC COMMUNITY,
FINLAND AND JAPAN. WE HAVE BEEN OPPOSED BY A LARGE
NUMBER OF DEVELOPING COASTAL STATES (20 SPEAKERS TO DATE
INCLUDING THE PRC), MANY OF WHOM HAVE ARGUED THAT THE
REVISED TEXT NEEDS TO BE AMENDED TO PROVIDEFURTHERAUTHORITY
FOR THE COASTAL STATE. IN SUM, THE COMMITTEE IS POLARIZED.
WHILE NO ONE HAS PROPOSED COMPROMISES, MEXICO AND AUSTRA-
LIA AND POSSIBLY NORWAY ARE INTERESTED IN PLAYING A
MEDIATING ROLE.

23 (B(BASIC STRATEGY/TACTICS OF THE U.S. DELEGATION TO
ACHIEVE SUCCESSFUL PROGRESS

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THE DELEGATION IS TAKING AN EXTREMELY HARD LINE BOTH
PUBLICLY AND PRIVATELY AND IS NOT PUTTING FORWARD IN
PUBLIC THE U.S. AMENDMENTS TO THE TEXT. ANY U.S.
PROPOSALS FOR COMPROMISE WILL NOT BE WELL-RECEIVED AND
WOULD BE VIEWED AS A SIGN OF WEAKNESS. ALSO, IT IS OUR
ASSESSMENT THAT ONLY THE U.S., THE FRG, AND POSSIBLY
FRANCE STRONGLY OPPOSE THE CONSENT REGIME. THE OTHERS
WHO ARE PUBLICLY SUPPORTING US WILL, IN THE END, CONCEDE
THE ISSUE. CONSEQUENTLY, WE MUST REMAIN FIRM, WITH
O COMPROMISE PROPOSALS BEING MADE BY OTHER COUNTRIES,
POSSIBLY AUSTRALIA OR NORWAY. WE WILL ENCOURAGE THEM AND
MEXICO TO DO THIS IN THE SMALL-GROUP NEGOTIATIONS. MORE
IMPORTANTLY, WE ARE WORKING TO CONVINCE THE SOVIETS TO
SUPPORT A COMPROMISE OR, AT A MINIMUM, TO BE SILENT
AND ALLOW CHAIRMAN YANKOV (BULGARIA) A FREE HAND TO SEEK
COMPROMISE. NO STRATEGY CAN SUCCEED IF THE USSR OPPOSES
US, EITHER PUBLICLY OR PRIVATELY AND OUR READING IS THAT
THEY, AND PROBABLY OTHERS, ARE NOT YET CONVINCED OF OUR
RESOLVE ON THIS ISSUE. UNTIL THAT IS SUFFICIENTLY CLEAR

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TO THEM, REAL NEGOTIATIONS WILL BE DIFFICULT.

23 (C). THE SECRETARY'S PARTICIPATION

THE DELEGATION NEEDS THE SECRETARY'S ASSISTANCE AT THIS TIME IN TWO WAYS:

--SECURING SOVIET ASSISTANCE IN AMENDING THE TEXT. THE SOVIETS CONTROL THE CHAIRMAN, AND WE MUST IMPRESS ON THEM THE UNACCEPTABILITY OF KEY PROVISIONS OF THE PRESENT TEXT, AND THE NEED FOR A FORMULA WE CAN BOTH SUPPORT. THE SOVIETS HAVE TO DATE BEEN MOST UNCOOPERATIVE AND WE MUST BEGIN A SUBSTANTIVE NEGOTIATION WITH THEM IF WE ARE TO ACHIEVE OUR OBJECTIVES. AND;
--CONVINCING THE OTHERS YOU WILL MEET THAT THIS IS AN ISSUE OF VITAL IMPORTANCE TO THE U.S. THIS WILL SUSTAIN OUR POSITION WITH OTHERS SO THAT WE CAN CARRY ON NEGOTIATIONS WITH THEM AS WE ARE TRYING TO RESOLVE OUR PROBLEMS WITH THE SOVIETS.

23(D). FUTURE STRATEGY

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IF YOUR VISITS ACHIEVE THE ABOVE OBJECTIVES, WE WOULD THEN WORK IN YANKOV'S SMALL-GROUP NEGOTIATIONS TOWARD OUR PROPOSALS CONTINUING TO UTILIZE THE GOOD OFFICES OF OTHER DELEGATIONS TO SEEK THE DESIRED SUBSTANTIVE OUTCOME. IF THE ABOVE STRATEGY FAILS AND THE COMMITTEE MOVES TOWARD CONSENSUS ON AN UNSATISFACTORY BASIS, WE WILL WORK TO PREVENT ANY AGREEMENT ON THE ISSUE, THUS PRESERVING IT FOR A LATER STAGE OF NEGOTIATIONS.

24. MARINE POLLUTION

24(A). BACKGROUND

24(A)(1). THERE IS ONE MAJOR ISSUE OF CONTROVERSY IN THIS AREA REQUIRING FURTHER NEGOTIATION. WE HAVE ARGUED, WITH THE SUPPORT OF CANADA, AUSTRALIA, AND MANY DEVELOPING COASTAL STATES, THERE SHOULD BE NO RESTRICTIONS ON COASTAL STATE AUTHORITY TO ESTABLISH VESSEL POLLUTION CONTROL REGULATIONS IN THE TERRITORIAL SEA OTHER THAN A REQUIREMENT NOT TO HAMPER INNOCENT PASSAGE. THE U.K., USSR, JAPAN AND OTHERS SUPPORT A PROVISION IN THE CURRENT COMMITTEE 11 RSNT THAT THERE SHOULD BE NO COASTAL STATE RIGHT TO SET CONSTRUCTION, DESIGN, EQUIPMENT, AND MANNING REGULATIONS. THE U.K. GOES EVEN FURTHER AND WOULD RESTRICT RIGHTS TO ESTABLISH MORE STRICT SAFETY REQUIREMENTS. EXISTING U.S. DOMESTIC LAW ATHORIZES SUCH REGULA-

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TIONS, AND WE HAVE BEEN STERNLY QUESTIONED BY CONGRESS
ON THE ISSUE.

24(A)(2). THE RSNT CONTAINS NO RESTRICTIONS ON COASTAL
STATE STANDARD SETTING IN THE POLLUTION TEXT IN PART III,
BUT DOES HAVE SUCH A RESTRICTION IN PART II OF THE TEXT.
WE HAVE OFFERED THE GROUP OF FIVE A COMPROMISE IN WHICH
WE WOULD ACCEPT THE RESTRICTION ON COASTAL STATE RIGHTS TO
ESTABLISH ALL TYPES OF REGULATIONS, EXCEPT THOSE AIMED
AT POLLUTION PREVENTION, IF THEY WOULD AGREE TO FIGHT THE
ISSUE ONLY IN COMMITTEE III. THIS WOULD ALLOW US TO
PRESENT A UNITED FRONT IN COMMITTEE II ON NAVIGATION
ISSUES, WHILE MOVING THIS ISSUE TO COMMITTEE III WHERE WE
WOULD HAVE A TACTICAL ADVANTAGE. THE USSR HAS ACCEPTED
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A MODIFICATION OF THE US AMENDMENT IN THE COMMITTEE II
SECTION OF THE RSNT SUBJECT TO APPROVAL BY OTHER MEMBERS
OF THE GROUP OF FIVE. THE U.K. HAS REJECTED THE AMENDMENT
AND WANTS THE ISSUE TO REMAIN IN COMMITTEE II.

24(A)(3). IN GENERAL TERMS, THE REMAINDER OF THE RSNT
IS ACCEPTABLE TO US AND PROBABLY TO THE CONFERENCE AS
A WHOLE ALTHOUGH WE,AND PROBABLY OTHERS,HAVE SOME OTHER
ISSUES TO RAISE. THE TEXT BEGINS WITH A SERIES OF
ARTICLES SETTING OUT GENERAL OBLIGATIONS TO PREVENT
POLLUTION, REQUIREMENTS TO COOPERATE WITH OTHERS, REQUIRE-
MENTS TO ASSESS POSSIBLE FUTURE POLLUTION, AND GENERAL
OBLIGATIONS TO PROVIDE TECHNICAL ASSISTANCE FOR POLLUTION
CONTROL. THERE ARE SEVERAL ARTICLES WITH OBLIGATIONS TO
ESTABLISH AND ENFORCE REGULATIONS REGARDING LAND-SOURCE
MARINE POLLUTION, POLLUTION FROM SEABED ECONOMIC
ACTIVITIES, AND POLLUTION FROM OCEAN DUMPING OF WASTES.

THE MAJOR PORTION OF THE TEXT DEALS WITH VESSEL SOURCE
POLLUTION. IT PROVIDES STRICT FLAG STATE OBLIGATIONS TO
ENACT AND ENFORCE POLLUTION CONTROL REGULATIONS, RIGHTS
FOR THE PORT-OF-ARRIVAL STATE TO ENFORCE AGAINST
VIOLATIONS OF INTERNATIONAL DISCHARGE REGULATIONS, AND
LIMITED COASTAL STATE RIGHTS TO ENFORCE AGAINST VESSELS
IN THE ECONOMIC ZONE FOR GROSS OR FLAGRANT VIOLATIONS
CAUSING MAJOR DAMAGE. THERE ARE ALSO A SERIES OF
PROCEDURAL SAFEGUARDS, A MILITARY EXEMPTION, AND A
REQUIREMENT FOR BINDING THIRD-PARTY SETTLEMENT OF DISPUTES.

24(A)(4). CURRENT NEGOTIATING STATUS OF THE MAIN OUT-
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COMMITTEE 111

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CHAIRMAN YANKOV HAS IDENTIFIED THE QUESTION OF COASTAL STATE STANDARD-SETTING REGARDING VESSEL POLLUTION IN THE TERRITORIAL SEA AS A MAJOR OUTSTANDING ISSUE. COMMITTEE LEVEL DISCUSSION OF THE ISSUE BEGAN MONDAY, AUGUST 9. ALL OF THE MAJOR MARITIME POWERS (EUROPEANS, USSR, AND JAPAN) CONTINUE TO STRONGLY SUPPORT THE RESTRICTION ON COASTAL STATE AUTHORITY AND SOME

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DEVELOPING COUNTRIES SUPPORT THEM. CANADA, AUSTRALIA, NEW ZEALAND, AND MOST DEVELOPING COUNTRIES CONTINUE TO SUPPORT OUR POSITION TO DELETE THE RESTRICTION. BECAUSE OF THE NATURE OF THE ISSUE, IT IS EXTREMELY DIFFICULT TO FIND SUBSTANTIVE COMPROMISE.

24(B). BASIC STRATEGY/TACTICS OF THE U.S. DELEGATION TO ACHIEVE SUCCESSFUL PROGRESS

OUR STRATEGY IS TO ISOLATE OUR OPPONENTS IN ORDER TO CONVINCE THEM THAT THEY CANNOT SUCCEED AND SHOULD ACCEPT OUR APPROACH (THE USSR EARLIER PRIVATELY INDICATED SOME FLEXIBILITY). THE U.K. IS UNLIKELY TO CONCEDE IN ANY SITUATION AND IS LOBBYING CONGRESS. IF WE CANNOT ISOLATE OUR OPPONENTS, WE WILL CONSIDER PROPOSING AMENDMENTS TO LIMIT THE SCOPE OF THE ARTICLE. HOWEVER, WE WILL DO SO ONLY IF OUR PRIMARY STRATEGY FAILS AND, IN ANY CASE, ONLY AT A LATER STAGE OF THE NEGOTIATION.

24(C). THE SECRETARY'S PARTICIPATION

IT IS NOT NECESSARY FOR YOU TO RAISE THE ISSUE AT THIS POINT EXCEPT DURING YOUR MEETING WITH THE CONFERENCE LEADERSHIP. HOWEVER, THE USSR AND FRG MAY RAISE THE ISSUE WITH YOU. SINCE WE WILL NOT BE AT A POINT REQUIRING COMPROMISE, YOU WOULD SIMPLY INDICATE FIRMNESS ON OUR POSITION.

24(D). FUTURE STRATEGY

IF OUR PRIMARY STRATEGY IS UNSUCCESSFUL, WE MAY NEED YOUR ASSISTANCE TO CONVINCE THE U.K. , AND POSSIBLY OTHERS, TO ACCEPT COMPROMISE AMENDMENTS.

25. DISPUTE SETTLEMENT

25(A). BACKGROUND

25(A)(1). PART IV OF RSNT SETS FORTH A COMPREHENSIVE SYSTEM FOR THE COMPUL5ORY SETTLEMENT OF DISPUTES THROUGH

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HAS STRONGLY SUPPORTED THIS APPROACH. IT IS NOW WIDELY
AGREED IN THE CONFERENCE THAT SOME SUCH SYSTEM SHOULD
BE INCLUDED IN THE TREATY, BUT OPPONENTS WILL TRY TO WATER
DOWN THE SYSTEM WITH EXCEPTIONS AND QUALIFICATIONS. THE
TEXT OF PART IV OF THE RSNT IS LARGELY ACCEPTABLE TO
THE U.S. THERE ARE, HOWEVER A NUMBER OF DIFFICULT
ISSUES REMAINING IN WORKING OUT THE SPECIFICS OF THE
SYSTEM. MOREOVER, IT IS A RATHER COMPLEX SYSTEM ENTAILING
A NUMBER OF ALTERNATIVE PROCEDURES.
WE WOULD LIKE TO SIMPLIFY IT IF POSSIBLE, BUT THIS MAY BE
QUITE DIFFICULT SINCE THE PARTICIPANTS HAVE WIDELY VARYING
PREFERENCES FOR THE FORA IN WHICH THEY COULD BE SUED AND
THERE IS A STRONG FEELING THAT A STATE SHOULD ONLY BE
SUED IN A FORUM IT HAS CHOSEN.
PART I OF THE RSNT (DEEP SEABEDS) WOULD ESTABLISH A
LARGELY SEPARATE SYSTEM FOR COMPULSORY DISPUTE SETTLEMENT
WITH RESPECT TO DISPUTES RELATING TO THE DEEP SEABED.
THE RELATIONSHIP BETWEEN THE NEW SEABED TRIBUNAL AND THE
PROCEDURES OF PART IV, WHICH INCLUDE A NEW LAW OF THE SEA
TRIBUNAL,REMAINS TO BE RESOLVED. A NUMBER OF STATES

FAVOR MERGING THE TWO TRIBUNALS, BUT OUR INDUSTRY IS
OPPOSED.

25(A)(2). CURRENT NEGOTIATING STATUS OF THE MAIN OUT-
STANDING ISSUES

JURISDICTION IN THE ECONOMIC ZONE. THE MOST
IMPORTANT AND DIFFICULT ISSUE RELATING TO PART IV IS THE
APPLICATION OF COMPULSORY SETTLEMENT OF DISPUTES ARISING
FROM THE EXERCISE OF COASTAL STATE RIGHTS IN THE ECONOMIC
ZONE. PART 18 OF THE PRESENT TEXT EXCLUDES SUCH DISPUTES,
AND THEN MAKES A NUMBER OF EXCEPTIONS TO THAT EXCLUSION
RELATING TO INTERFERENCE WITH NAVIGATION, OVERFLIGHT,
SUBMARINE CABLES AND PIPELINES AND THE ENVIRONMENT. THE
MAIN TREND IN THE GROUP OF 77 IS TO CUT BACK DISPUTE
SETTLEMENT JURISDICTION WHILE MOST DEVELOPED COUNTRIES
WISH TO EXTEND JURISDICTION BY STRENGTHENING THE EXCEPTIONS
TO THE EXCLUSION IN ORDER TO SUBMIT TO DISPUTE SETTLEMENT
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SCIENTIFIC RESEARCH AND FISHERIES AS WELL. THIS IS IN A
BROADER SENSE ONE ASPECT OF THE BASIC DISPUTE IN COMMITTEE
II OVER THE NATURE OF THE ECONOMIC ZONE, WITH THE MARITIME
STATES EMPHASIZING ITS INTERNATIONAL CHARACTER, PARTICULARLY
ON MATTERS OTHER THAN RESOURCES.
THERE SEEMS TO BE GROWING SUPPORT FOR THE VIEW THAT
DISPUTES RELATING TO INTERFERENCE WITH FREEDOM OF NAVIGA-
TION AND OVERFLIGHT IN THE ECONOMIC ZONE SHOULD BE
SUBJECT TO DISPUTE SETTLEMENT. IT ALSO SEEMS LIKELY THAT
A VIOLATION OF INTERNATIONAL STANDARDS RELATING TO MARINE
ENVIRONMENT WILL BE SUBJECT TO DISPUTE SETTLEMENT. AT
THIS SESSION THERE WERE SOME INDICATIONS (E.G., BY
CHILE) THAT AT LEAST SOME DISPUTES RELATING TO SCIENTIFIC
RESEARCH COULD BE SUBJECT TO DISPUTE SETTLEMENT.
MANY COASTAL STATES SEEM TO BE RECONCILED TO THE FACT
THAT THE BASIC RULE IS COMPULSORY JURISDICTION OVER ALL
DISPUTES RELATING TO THE INTERPRETATION OR APPLICATION OF
THE CONVENTION, WITH SOME EXEMPTIONS. BUT MEXICO AND
INDIA ARE STILL STRONGLY NEGATIVE ABOUT ANY INTERNATIONAL
INTERFERENCE WITH THE RIGHTS OF THE COASTAL STATE.
THE PRINCIPAL ISSUE IN CONTENTION IS LIKELY TO BE
THE EXTENT TO WHICH DISPUTE SETTLEMENT SHOULD APPLY TO

FISHERIES. COASTAL STATES ARE OPPOSED TO ANY SECOND
GUESSING BY AN INTERNATIONAL BODY WITH RESPECT TO
DECISIONS RELATING TO MAXIMUM SUSTAINABLE YIELD, OR THE
CAPACITY OF THE COASTAL STATE TO HARVEST LIVING RESOURCES;
THEY REJECT ANY CONTROLS OVER THEIR DECISIONS RELATING TO
THE RIGHT OF ACCESS OF ANY PARTICULAR FOREIGN COUNTRY.
SOME MEMBERS OF CONGRESS ARE LIKELY TO HAVE THE SAME

ATTITUDE.

25(A)3COMPETENT ORGAN. PART IV ALLOWS EACH STATE WIDE
LATITUDE IN CHOOSING A FORUM SO LONG AS AT LEAST ONE
METHOD OF COMPULSORY DISPUTE SETTLEMENT LEADING TO A
BINDING DECISION APPLIES TO SUITS AGAINST EVERY PARTY.

25(A)4FROMTHEBEGINNING OF THE NEGOTIATIONS, IT WAS
CLEARTHATMOST AFRICAN COUNTRIES AND SOME ASIAN AND
LATIN AMERICAN COUNTRIES, AS WELL AS THE SOVIET UNION AND
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FRANCE WERE OPPOSED TO CONFERRING JURISDICTION ON THE
INTERNATIONAL COURT OF JUSTICE. REGARDLESS OF THIS OPPOSI-
TION, A FEW STATES, ESPECIALLY JAPAN AND SOME EUROPEAN
COUNTRIES,HAVE STRONGLY SUPPORTED THE COURT. FRANCE
AND THESOVIET UNION PREFE SPECIAL COMMISSIONS OF
TECHNICAL CHARACTER TO DEAL WITH FISHERIES, MARINE
POLLUTION, SCIENTIFIC RESEARCH, AND NAVIGATION; THEY ARE

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WILLING TO ACCEPT ARBITRATION FOR OTHER SUBJECTS. THERE IS ALSO A GROUP OF COUNTRIES PREFERRING SIMPLE ARBITRATION PROCEDURES.

THE MAJORITY OF THE MEMBERS OF THE GROUP OF 77 WHO ARE ACTIVE ON DISPUTE SETTLEMENT PREFER A SPECIAL LOS TRIBUNAL, AND INDIA AND ALGERIA RECENTLY ENDORSED IT.

25 (A)(5). THE SO-CALLED RIPHAGEN FORMULA, INVENTED BY THE NETHERLANDS LEGAL ADVISER, ALLOWS EACH COUNTRY TO CHOOSE, AT THE TIME OF RATIFICATION, ONE OR MORE OF FOUR DISPUTE SETTLEMENT FORA: THE INTERNATIONAL COURT OF JUSTICE; ARBITRATION; THE LOS TRIBUNAL; OR THE SYSTEM OF SPECIAL COMMISSIONS (WITH ARBITRATION FOR OTHER SUBJECTS). WHEN BOTH COUNTRIES ACCEPT THE SAME FORUM, THERE IS NO PROBLEM; IF THEY HAVE ACCEPTED DIFFERENT FORA, THE PLAINTIFF HAS TO GO TO THE FORUM CHOSEN BY THE DEFENDANT. THE FORMULA HAS BASICALLY BEEN INCORPORATED INTO THE RSNT. THE UNITED STATES FAVORS THE FLEXIBILITY OF THE RIPHAGEN FORMULA; THE SOVIET UNION HAS ACCEPTED IT THOUGH IT DOES NOT LIKE THE LOS TRIBUNAL. THE FRENCH, AND TO SOME EXTENT THE BRITISH, PREFER A STRAIGHT ARBITRATION FORMULA; THEY WOULD APPLY IT AT LEAST IN ANY CASE WHERE THE TWO DECLARATIONS BY THE PARTIES TO THE DISPUTE DO NOT COINCIDE.

25(A)(6) TWO TRIBUNALS

THE UNITED STATES WAS THE FIRST TO PROPOSE A SEABED TRIBUNAL WITH A SPECIAL JURISDICTION, SIMILAR TO THE FRENCH CONSEIL D'ETAT AND THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES, FOR DISPUTES BETWEEN THE SEABED AUTHORITY AND STATES OR PRIVATE CONTRACTORS. IT WAS ALSO

THE UNITED STATES'PROPOSAL IN 1973 WHICH FIRST SUGGESTED THE ESTABLISHMENT OF AN OVERALL LOS TRIBUNAL FOR NON-SEABED WATERS. THE PROPOSAL WAS PROMPTED BY THE NEED FOR PROTECTING THE VARIETY OF US INTERESTS IN THE OCEANS AND FOR PREVENTING THE MANY LIKELY OCEAN DISPUTES FROM ESCALATING INTO DANGEROUS CONFLICTS OF THE "COD WAR" VARIETY. THE UNTIED STATES WANTED ALSO TO ACHIEVE SOME UNIFORMITY IN THE INTERPRETATION OF THE LOS CONVENTION WHICH COULD BE DESTROYED IF A VARIETY OF ARBITRAL TRI-BUNALS SHOULD INTERPRET THE CONVENTION IN MANY DIFFERENT WAYS, ESPECIALLY ON REGIONAL LINES.

THE SEABED TRIBUNAL WOULD BE ELECTED BY THE SEABED ASSEMBLY ON NOMINATION OF THE SEABED COUNCIL, THUS

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ENSURING A MEASURE OF INFLUENCE OF THE MAJOR POWERS ON THE SELECTION OF THE JUDGES. THE LOS TRIBUNAL WOULD BE ELECTED BY A CONFERENCE OF THE CONTRACTING PARTIES, BY A TWO-THIRDS MAJORITY, WITH SOME PROTECTION FOR THE DEVELOPED COUNTRIES (ESPECIALLY IF THEY HAVE SOME SUPPORT FROM THE LANDLOCKED ONES), BUT WITH LESS GUARANTEE OF FAVORABLE ELECTIONS THAN IS LIKELY IN THE SEABED TRIBUNAL. THE CURRENT DRAFT OF THE STATUTE OF THE LOS TRIBUNAL INCLUDES REGIONAL FORMULA FOR THE SELECTION OF JUDGES (WESTERN EUROPE AND OTHERS - 3, EASTERN EUROPE - 2, ASIA - 3, LATIN AMERICA - 3, AFRICA - 4), WHICH THE UNITED STATES AND THE WESTERN EUROPEAN COUNTRIES HAVE FOUND UNSATISFACTORY. AN ATTEMPT WILL BE MADE TO

ELIMINATE THIS FORMULA, AS IT IS INCONSISTENT ITH THE IDEA OF AN INDEPENDENT TRIBUNAL, AND ENCOURAGES THE VIEW THAT JUDGES REPRESENT REGIONS.

25(B) THE SECRETARY'S PARTICIPATION

UNLIKE COMMITTEE I AND II, THE INFORMAL PLENARY CONSIDERING DISPUTE SETTLEMENT HAS NOT YET BEEN THE SCENE OF POLARIZATION ALONG NORTH/SOUTH LINES OR BETWEEN COASTAL, LL/GDS AND MARITIME STATES. HOWEVER, PART IV OF THE RSNT HAS NOT BEEN THE RESULT OF ANINTENSIVE NEGOTIATION AS THE OTHER PARTS,ANDTHUS IS NOT VIEWED AS A "REVISED" SNT IN THE SENSE OF THE OTHER TEXTS. MANY COASTAL STATES

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HAVE CONSIDERED IT PREMATURE UP TO NOW TO CONSIDER DISPUTE SETTLEMENT SERIOUSLY, SINCE IT IS DEPENDENT IN CRITICAL RESPECTS ON WHAT IS SETTLED IN THE MAIN COMMITTEES. SINCE MANY STATES ARE NOW PARTICIPATING ACTIVELY FOR THE FIRST TIME ON THE SUBJECT, THE PARA-METERS OF OUR NEGOTIATING HURDLES ARE AS YET UNCLEAR. ACCORDINGLY, WE ARE SEEKING TO CLARIFY THE STRENGTH OF MOVES TO COMBINE THE TRIBUNALS, SIMPLIFY THE CHOICE OF PROCEDURES AND ALTER THE EXCLUSION OF DISPUTES ARISING FROM THE EXERCISE OF COASTAL STATE RIGHTS IN THE ECONOMIC ZONE. SPECIFIC STRATEGIES FOR KNOWN PROBLEMS, LIKE THE FRENCH/BRITISH INSISTENCE ON ARBITRATION AS THE PRIMARY PROCEDURE, ARE REFLECTED IN THE COUNTRY PAPERS.

25(C). YOUR VISIT AT THIS POINT IS USEFUL FOR EMPHASIZING THE IMPORTANCE OF COMPULSORY DISPUTE SETTLE-MENT FOR MOST DISPUTES, ESPECIALLY RELATING TO THE ECONOMIC ZONE, AND THE NEED TO CONCENTRATE ON REACHING REASONABLE ACCOMMODATIONS THAT DO NOT SUBVERT THIS PRINCIPLE.

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